UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORDIC CLINICAL INC., Plaintiff, v. HEALTH RESEARCH LABORATORIES, LLC, KRAMER DUHON, individually; and DOES 1 through 10, Defendants.	Civil Action No.: _____________ JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff NORDIC CLINICAL INC. ("Plaintiff" or "Nordic"), makes and files this its Original Complaint against Defendants HEALTH RESEARCH LABORATORIES, LLC, KRAMER DUHON and DOES 1 through 10 (collectively, "Defendants"), and alleges as follows:

NATURE OF ACTION

1. This is an action seeking injunctive relief and damages arising from Defendants' violation of the Copyright Act; the Lanham Act; common law trade dress infringement; unfair competition; and unjust enrichment.

THE PARTIES

2. Plaintiff Nordic is a Delaware corporation residing in and having a principal place of business in St-Leonard, Quebec, Canada.

3. Defendant Health Research Laboratories, LLC ("HRL") is, upon information and belief, a Nevada limited liability company residing in and having a principal place of business in

or near Irving, Texas, and can be served with process of service by and through its registered agent, GKL Registered Agents of Nevada, 3064 Silver Sage Drive, Suite 150, Carson City, Nevada 89701.

4. Defendant Kramer Duhon ("Duhon") is an individual residing, upon information and belief, in or near Dallas, Texas, and can be served at his place of business at 4040 N. Central Expressway, Dallas, Texas 75204-3128. Duhon defines his role with HRL as Owner and Managing Member.

5. The Defendants designated herein as Does 1 through 10 (the "Doe Defendants") are presently unknown to Nordic. The true names, identities and capacities, and the respective relationships of the Doe Defendants to the known Defendants, are presently unknown to Nordic, which therefore sues said Doe Defendants by such fictitious names. Each of the Doe Defendants was and is the agent, servant, employee, partner, alter ego, subcontractor, owner and/or joint venturer of each of the other Defendants, and in doing all of the things alleged herein, each was acting within the scope of such agency, employment, partnership, ownership and/or joint venture, and was acting as the alter ego of each other Defendant. Upon information and belief, the acts and conduct herein alleged of each Doe Defendant were known to, authorized by and/or ratified by the other Defendants. Nordic will seek leave of the Court to amend this Complaint to set forth the true names, identities and capacities of the Doe Defendants when ascertained.

JURISDICTION AND VENUE

6. This action arises in part under the Copyright Act (17 U.S.C. § 101, *et seq.*) and the Lanham Act (15 U.S.C. § 1051, *et seq.*).

7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

8. Additionally, the Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1367.

9. The Court has personal jurisdiction over Defendants because, *inter alia*, Defendants HRL and Duhon are residents of the State of Texas and this District.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

11. Since at least 2014, Nordic has developed, manufactured and offered in commerce a diverse inventory of high-quality dietary and nutritional supplements.

12. Nordic advertises and sells its dietary and nutritional supplements throughout the United States through, *inter alia*, distinctive and creative direct mail marketing campaigns.

Nordic's Copyright-Protected Materials

13. One of the direct mail marketing materials developed by Nordic is a mailer that advertises and promotes Nordic's hydration drink mix HydraBurst™ (the "HydraBurst™ Mailer").

14. The HydraBurst™ Mailer was created in 2015 and first published on or about March 27, 2015.

15. Nordic is the exclusive owner of all common law rights, title and interest in and to the HydraBurst™ Mailer and all original portions thereof including, but not limited to, the original written text and artwork, and compilation of same, on each page of the HydraBurst™ Mailer (collectively, the "Copyright-Protected Work").

16. Nordic registered its Copyright-Protected Work under United States law in strict conformity with the Copyright Act (Reg. No. TX0008258975) to protect against unauthorized infringement and consumer confusion – prima facie evidence of the validity of the copyright and its ownership by Nordic. Attached hereto as Exhibit 1 is a true and correct copy of the Copyright-Protected Work's Certificate of Registration.

17. The Copyright-Protected Work contains clear and conspicuous copyright management information, including Nordic's name, address, telephone number and other identifying information.

18. Nordic has devoted significant time, expense and effort in the development of the Copyright-Protected Work, and has had significant marketing success in connection therewith.

19. The originality and creativity of the Copyright-Protected Work are fundamental to Nordic's reputation and garner substantial and valuable goodwill with consumers.

Nordic's Trade Dress

20. Nordic owns exclusive rights in inherently distinctive forms of trade dress including, but not limited to, the size, shape, color and/or color combinations, designs, graphics and/or sales techniques of the Copyright-Protected Work and portions thereof (collectively, the "Nordic Trade Dress").

21. The Nordic Trade Dress has a unique, non-functional and inherently distinctive design that designates a single source of origin.

22. Since long prior to the acts complained of herein, Nordic began continuously and extensively using the Nordic Trade Dress in connection with the advertising and sale of dietary and nutritional supplements.

23. The Nordic Trade Dress has acquired secondary meaning, which identifies and distinguishes Nordic's quality dietary and nutritional supplements from goods offered by other companies.

24. Since long prior to the acts complained of herein, the Nordic Trade Dress has been, and continues to be, widely publicized through substantial advertising throughout the United States including, but not limited to, the State of Texas and this District.

25. Through substantial sales and advertising expenditures, the Nordic Trade Dress has become a valuable asset and well-known symbol of Nordic's substantial goodwill throughout the United States.

26. Nordic has invested hundreds of thousands of dollars and substantial time, labor and skill to create strong brand awareness of the Nordic Trade Dress among prospective customers throughout the United States.

27. As a result, since long prior to Defendants' unauthorized and confusingly similar use of the Nordic Trade Dress, the Nordic Trade Dress had become widely recognized among the consuming public of the United States as a trusted source of quality Nordic dietary and nutritional supplements.

Defendants and Their Wrongful Conduct

28. Defendants HRL and Duhon manufacture and offer in commerce various dietary and nutritional supplements in direct competition with Nordic including, but not limited to, a hydration drink mix named "Hydroxin."

29. In or about August 2016, Defendants copied, reproduced, distributed, displayed and/or prepared derivative work(s) from the Copyright-Protected Work and portions thereof, without Nordic's consent (the "Infringing Work").

30. Defendants have willfully and unlawfully misappropriated substantial and virtually identical portions of Nordic's Copyright-Protected Work by and through the Infringing Work, in many instances only substituting their own false copyright management information for those of Nordic.

31. At the time of commencing their use of the Infringing Work, Defendants knew or should have known of Nordic and Nordic's HydraBurst™ supplement, Copyright-Protected Work and Nordic Trade Dress. Moreover, on September 23, 2016, Nordic's counsel delivered legal

correspondence to Defendants HRL and Duhon demanding that they cease and desist from their infringing conduct.

32. Further, the Infringing Work incorporates the Nordic Trade Dress, which is distinctively associated with Nordic and its dietary and nutritional supplements.

33. Defendants have used the Infringing Work – a confusingly and substantially similar variation of the Nordic Trade Dress – to promote and offer in commerce the dietary and nutritional supplement Hydroxin, which is essentially identical to Nordic's HydraBurst™ dietary and nutritional supplement.

34. Defendants widely distributed the Infringing Work as their own through direct mail – the same primary channel of trade as Nordic.

35. The sole business conducted by Defendants by and through the Infringing Work appears to be deceptively misappropriating and capitalizing upon Nordic's Copyright-Protected Work and Nordic Trade Dress for economic gain.

36. The foregoing acts of Defendants are likely to cause, and upon information and belief have actually caused, consumer confusion as to: (a) the source and quality of the respective products offered by Nordic and Defendants; and (b) Defendants' association, affiliation, endorsement and/or sponsorship with/by Nordic.

37. As a result, Defendants are harming and deceiving consumers and irreparably damaging the goodwill associated with Nordic and the Nordic Trade Dress.

38. Defendants' infringing activities display a conscious disregard for Nordic's intellectual property rights.

39. At no time has Nordic authorized or consented to Defendants' use of the Copyright-Protected Work, the Nordic Trade Dress or any other Nordic intellectual property.

40. Nordic has performed all conditions precedent necessary to maintain the instant action that have not been otherwise waived or excused.

FIRST CLAIM FOR RELIEF
Copyright Infringement
(17 U.S.C. § 101, *et seq.*)

41. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 40 above as if specifically set forth herein in their entirety.

42. The Copyright-Protected Work constitutes an original work of authorship and copyright-protectable subject matter under the laws of the United States.

43. Nordic is the exclusive owner of all rights, title and interest in and to the Copyright-Protected Work.

44. Defendants had and have access to, and actual knowledge of, the Copyright-Protected Work.

45. Defendants have copied, reproduced, prepared derivative works from, distributed copies to the public of and/or displayed publicly the Copyright-Protected Work without the consent or authority of Nordic, thereby directly infringing Nordic's copyrights.

46. Defendants' copies, reproductions, derivative works, distributions and/or displays are identical and/or substantially similar to the Copyright-Protected Work.

47. The foregoing acts of Defendants constitute direct and/or contributory copyright infringement of Nordic's exclusive rights in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

48. Upon information and belief, Defendants' actions were and are intentional, willful, wanton and performed in disregard of Nordic's rights.

49. Upon information and belief, Defendant Duhon had and has the right and ability to control, and a direct financial interest, in the aforementioned infringing activity.

50. Upon information and belief, Defendant Duhon induced, caused and/or materially contributed to the aforementioned infringing activity with knowledge of same.

51. Nordic has been and will continue to be damaged, and Defendants have been unjustly enriched, by Defendants' unlawful infringement of Nordic's rights, in an amount to be proven at trial.

52. Further, Defendants' conduct has caused irreparable and incalculable harm and injuries to Nordic and, unless enjoined, will cause further irreparable and incalculable injury, for which Nordic has no adequate remedy at law.

53. Nordic is entitled to the relief provided by 17 U.S.C. §§ 502–05, including, but not limited to, injunctive relief, an order for the impounding and destruction of all Defendants' infringing copies and/or derivative works, compensatory damages (including, but not limited to actual damages and/or Defendants' profits), statutory damages and Nordic's costs and attorneys' fees in amounts to be determined at trial.

SECOND CLAIM FOR RELIEF
Removal and/or Alteration of Copyright Management Information
(17 U.S.C. § 1202)

54. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53 above as if specifically set forth herein in their entirety.

55. Defendants intentionally and unlawfully removed and/or altered copyright management information from Nordic's Copyright-Protected Work without the authority of Nordic and with the knowledge, or reason to know, that said removal and/or alteration would induce, enable, facilitate and/or conceal infringement of copyright.

56. Defendants associated their own false copyright management information with Nordic's Copyright-Protected Work.

57. The foregoing acts of Defendants violate Section 1202 of the Copyright Act, 17 U.S.C. § 1202.

58. Upon information and belief, Defendants' actions were and are intentional, willful, wanton and performed in disregard of Nordic's rights.

59. Nordic has been and will continue to be damaged, and Defendants have been unjustly enriched, by Defendants' unlawful removal and/or alteration of Nordic's copyright management information from Nordic's Copyright-Protected Work, in an amount to be proven at trial.

60. Further, Defendants' conduct has caused irreparable and incalculable harm and injuries to Nordic and, unless enjoined, will cause further irreparable and incalculable injury, for which Nordic has no adequate remedy at law.

61. Nordic is entitled to the relief provided by 17 U.S.C. § 1203, including, but not limited to, injunctive relief, an order for the impounding and destruction of all Defendants' devices/products involved in the violation, compensatory damages (including, but not limited to actual damages and/or Defendants' profits), statutory damages and Nordic's costs and attorneys' fees in amounts to be determined at trial.

THIRD CLAIM FOR RELIEF
Federal Trade Dress Infringement
(15 U.S.C. § 1125(a))

62. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 61 above as if specifically set forth herein in their entirety.

63. Nordic is the exclusive owner of all common law rights, title and interest in and to the Nordic Trade Dress the goodwill associated therewith.

64. Defendants' use of the Infringing Work infringes upon Nordic's superior rights in and to the Nordic Trade Dress.

65. Defendants have knowingly used the Infringing Work and confusingly similar trade dress in commerce without the consent of Nordic in connection with the sale, offering for sale and/or advertising of their dietary and nutritional supplements, and such activities are likely to cause confusion or mistake, or to deceive consumers in the United States, as to the source, sponsorship and/or association of/with Defendants' dietary and nutritional supplements.

66. Defendants' infringing acts include, without limitation, the distribution of direct mail marketing materials bearing the Nordic Trade Dress; the promotion of dietary and nutritional supplements by and through the Infringing Work and confusingly similar trade dress; the use of the Infringing Work and confusingly similar trade dress themselves; and the direct, indirect and/or cooperative offering of dietary and nutritional supplements in the United States in connection with Nordic's Trade Dress.

67. Under the circumstances of this case, Defendants' infringing activities constitute intentional, willful infringement in violation of Nordic's rights under 15 U.S.C. § 1125(a).

68. Further, Defendants' conduct has caused irreparable and incalculable harm and injuries to Nordic and, unless enjoined, will cause further irreparable and incalculable injury, for which Nordic has no adequate remedy at law.

69. Nordic has also sustained actual damages as a result of Defendants' infringing activities in an amount to be ascertained at trial.

70. Based upon Defendants' activities, this case is exceptional and qualifies for injunctive relief; a disgorgement of Defendants' profits; actual damages; and treble damages, together with attorneys' fees pursuant to 15 U.S.C. § 1117(b).

FOURTH CLAIM FOR RELIEF
Federal Unfair Competition and False Designation of Origin
(15 U.S.C. § 1125(a))

71. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 70 above as if specifically set forth herein in their entirety.

72. Nordic is the exclusive owner of all common law rights, title and interest in and to the Nordic Trade Dress the goodwill associated therewith.

73. The distinctive Nordic Trade Dress has become uniquely associated with Nordic and identifies Nordic's quality dietary and nutritional supplements to the public.

74. Defendants' use of the Infringing Work and confusingly similar trade dress in connection with the promotion and sale of dietary and nutritional supplements constitutes direct and/or contributory unfair competition, and false designation of origin, and comprise false and misleading representations, in violation of Nordic's rights under 15 U.S.C. § 1125(a).

75. Further, Defendants' conduct has caused irreparable and incalculable harm and injuries to Nordic and, unless enjoined, will cause further irreparable and incalculable injury, for which Nordic has no adequate remedy at law.

76. Nordic has also sustained actual damages as a result of Defendants' aforesaid activities in an amount to be ascertained at trial.

77. Based upon Defendants' activities, this case is exceptional and qualifies for injunctive relief; a disgorgement of Defendants' profits; actual damages; and treble damages, together with attorneys' fees pursuant to 15 U.S.C. § 1117(b).

FIFTH CLAIM FOR RELIEF
Common Law Trade Dress Infringement

78. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 77 above as if specifically set forth herein in their entirety.

79. Nordic is the exclusive owner of all common law rights, title and interest in and to the valid and protectable Trade Dress and the goodwill associated therewith.

80. Nordic is the senior user of the Nordic Trade Dress. Nordic's use of its Trade Dress is distinctive and has acquired secondary meaning.

81. Defendants' actions described herein are likely to cause, and upon information and belief have actually caused, consumer confusion as to: (a) the source and quality of the respective products offered by Nordic and Defendants; and (b) Defendants' association, affiliation, endorsement and/or sponsorship with/by Nordic.

82. Upon information and belief, Defendants acted: (a) with the specific intent of causing substantial injury to Nordic; and/or (b) with an extreme degree of risk, considering the magnitude and probability of the potential harm to others, and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others.

83. Under the circumstances of this case, Defendants' infringing activities constitute intentional, malicious and/or grossly negligent infringement in violation of Nordic's rights under Texas common law.

84. Further, Defendants' conduct has caused irreparable and incalculable harm and injuries to Nordic and, unless enjoined, will cause further irreparable and incalculable injury, for which Nordic has no adequate remedy at law.

85. Nordic has also sustained actual damages as a result of Defendants' infringing activities in an amount to be ascertained at trial.

86. Based upon Defendants' activities, this case qualifies for injunctive relief; a disgorgement of Defendants' profits; actual damages; and exemplary damages pursuant to Texas Civil Practice and Remedies Code § 41.003.

SIXTH CLAIM FOR RELIEF
Common Law Unfair Competition

87. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 86 above as if specifically set forth herein in their entirety.

88. Nordic's use of its Trade Dress is distinctive and has acquired secondary meaning.

89. Nordic is the senior user of the Nordic Trade Dress.

90. Defendants, directly or indirectly, have engaged in competitive business with Nordic, namely, the manufacture, marketing, distribution and sale of dietary and nutritional supplements.

91. Defendants' actions described herein are likely to cause, and upon information and belief have actually caused, consumer confusion as to: (a) the source and quality of the respective products offered by Nordic and Defendants; and (b) Defendants' association, affiliation, endorsement and/or sponsorship with/by Nordic.

92. Upon information and belief, Defendants acted: (a) with the specific intent of causing substantial injury to Nordic; and/or (b) with an extreme degree of risk, considering the magnitude and probability of the potential harm to others, and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others.

93. By the acts described herein, Defendants have engaged in direct and/or contributory unfair competition by unlawfully capitalizing upon Nordic's efforts and success in violation of Texas common law. Upon information and belief, Defendants' actions have deceived and confused the public, and are likely to continue to do so.

94. Upon information and belief, Defendants knowingly conspired with each other to engage in unfair competition, thereby harming Nordic's business operations through unlawful means, and are therefore vicariously liable for acts committed in furtherance of the conspiracy to commit unfair competition.

95. Defendants' conduct has caused irreparable and incalculable harm and injuries to Nordic and its business, reputation trade dress and goodwill and, unless enjoined, will cause further irreparable and incalculable injury, for which Nordic has no adequate remedy at law.

96. Nordic has also sustained actual damages as a result of Defendants' infringing activities in an amount to be ascertained at trial.

97. Based upon Defendants' activities, this case qualifies for injunctive relief; a disgorgement of Defendants' profits; actual damages; and exemplary damages pursuant to Texas Civil Practice and Remedies Code § 41.003.

SEVENTH CLAIM FOR RELIEF
Unjust Enrichment

98. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 97 above as if specifically set forth herein in their entirety.

99. As a result of the conduct alleged herein, Defendants have been unjustly enriched to Nordic's detriment. Nordic seeks a worldwide accounting and disgorgement of all ill-gotten gains and profits resulting from Defendants' inequitable activities.

EIGHTH CLAIM FOR RELIEF
Application for Preliminary and Permanent Injunction

100. Nordic realleges and incorporates by reference the allegations contained in Paragraphs 1 through 99 above as if specifically set forth herein in their entirety.

101. Upon information and belief, Defendants, unless enjoined, will continue to infringe upon Nordic's intellectual property and misrepresent and mislead the public in violation of the Copyright Act, the Lanham Act and Texas law.

102. Defendants' actions entitle Nordic to a preliminary injunction and, upon hearing, permanent injunction enjoining Defendants and their agents, servants, employees, affiliates, attorneys and all others acting in privity or in concert with them, and their respective parents, subsidiaries, divisions, successors and assigns, from:

a. copying, reproducing, preparing derivative works from, distributing copies to the public of and/or publicly displaying the Copyright-Protected Work;

b. removing and/or altering copyright management information from Nordic's Copyright-Protected Work;

c. directly or indirectly infringing the Nordic Trade Dress or using any other designations similar to, or likely to cause confusion with, the Nordic Trade Dress including, but not limited to, the Infringing Work;

d. passing off Defendants' products and associated marketing materials as being associated with and/or sponsored or affiliated with Nordic; and/or

e. committing any other unfair business practices directed toward obtaining for Defendants the business and customers of Nordic; devaluing or diminishing the brand or business of Nordic; and/or deceiving or confusing the public.

PRAYER FOR RELIEF

WHEREFORE, Nordic prays for relief as follows:

1. An order preliminarily and permanently enjoining Defendants and their agents, servants, employees, affiliates, attorneys and all others acting in privity or in concert with them, and their respective parents, subsidiaries, divisions, successors and assigns, from:

a. Copying, reproducing, preparing derivative works from, distributing copies to the public of and/or publicly displaying the Copyright-Protected Work;

b. Removing and/or altering copyright management information from Nordic's Copyright-Protected Work;

c. Directly or indirectly infringing the Nordic Trade Dress or using any other designations similar to, or likely to cause confusion with, the Nordic Trade Dress including, but not limited to, the Infringing Work;

d. Passing off Defendants' products and associated marketing materials as being associated with and/or sponsored or affiliated with Nordic;

e. Committing any other unfair business practices directed toward obtaining for Defendants the business and customers of Nordic; devaluing or diminishing the brand or business of Nordic; and/or deceiving or confusing the public;

2. That Defendants offer up for destruction all products and marketing materials in their possession or control bearing the Nordic Trade Dress or any confusingly similar variation thereof including, but not limited to, the Infringing Work, pursuant to 15 U.S.C. § 1118;

3. Actual damages suffered by Nordic as a result of Defendants' unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

4. Statutory damages pursuant to 17 U.S.C. §§ 504 and 1203;

5. Reasonable funds for future corrective advertising;

6. An accounting of Defendants' profits pursuant to 15 U.S.C. § 1117;

7. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117;

8. Exemplary damages pursuant to Texas Civil Practice and Remedies Code § 41.003;

9. Restitutionary relief against Defendants and in favor of Nordic, including disgorgement of wrongfully obtained profits and any other appropriate relief;

10. Costs of suit and reasonable attorneys' fees; and

11. Any other remedy to which Nordic may be entitled, including all remedies provided for in 15 U.S.C. §§ 1116–18 and 1125; 17 U.S.C. §§ 502–05 and 1203; Texas Civil Practice and Remedies Code § 41.003; and under any other federal and/or Texas State law.

JURY DEMAND

Plaintiff Nordic Clinical Inc. requests a trial by jury of all claims.

Dated: November 23, 2016

Respectfully submitted,

/s/ *Darin Klemchuk*

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